

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LINEAR TECHNOLOGY CORPORATION)
)
Plaintiff,)
)
v.) C.A. No. 06-476 (GMS)
)
MONOLITHIC POWER SYSTEMS, INC.,)
)
Defendant.)

MPS's PROPOSED FINAL VERDICT FORM;
MPS's OBJECTIONS TO LINEAR'S PROPOSED FINAL VERDICT FORM

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We, the jury, unanimously find as follows:

I. BREACH OF CONTRACT¹

A. Do you find that Linear has proven by a preponderance of the evidence that MPS breached the Settlement Agreement?

A “YES” answer is a finding for Linear. A “NO” answer is a finding for MPS.

YES NO

B. If you answered “YES” to Question I.A., do you find that Linear has proven by a preponderance of the evidence that the MP1543 has “the ZX circuitry identified by counsel for Linear in the ITC Proceeding,” and that this circuitry is connected in the MP1543 so as to allow the MP1543 to either (a) enter into “sleep mode,” (b) enter into “reverse polarity protection,” or (c) “otherwise practice the asserted claims”?

A “YES” answer is a finding for Linear. A “NO” answer is a finding for MPS.

YES NO

C.² Do you find that Linear has proven by a preponderance of the evidence that the \$3 million liquidated damages clause in the Settlement Agreement applies to district court actions in addition to proceedings before the International Trade Commission?

A “YES” answer is a finding for Linear. A “NO” answer is a finding for MPS.

YES NO

If you have answered question I.C. “NO,” skip to Section II, below.

¹ To be given only if the Court denies MPS’s pending Motion for Summary Judgment of No Breach of Contract (Count One).

² To be given only if the Court denies MPS’s Motion in Limine No. 1 and MPS’s Motion to Bifurcate.

D.³ Do you find that MPS has proven by a preponderance of the evidence that the \$3 million liquidated damages clause in the Settlement Agreement was not the result of the parties trying to estimate the actual financial damages that Linear likely would suffer in the event of a breach of the Settlement Agreement?

A “YES” answer is a finding for MPS. A “NO” answer is a finding for Linear.

YES NO

If you have answered question I.D. “YES,” skip to Section II, below.

E.⁴ Do you find that MPS has proven by a preponderance of the evidence that the \$3 million liquidated damages figure in the Settlement Agreement is disproportionate to the damages, if any, that the parties contemplated would result from a breach of Settlement Agreement anticipated at the time they entered into the Settlement Agreement?

A “YES” answer is a finding for MPS. A “NO” answer is a finding for Linear.

YES NO

If you have answered question I.E. “YES,” skip to Section II, below.

F.⁵ Do you find that MPS has proven by a preponderance of the evidence that the \$3 million liquidated damages clause in the Settlement Agreement would permit Linear to seek to recover \$3 million in addition to its actual damages?

A “YES” answer is a finding for MPS. A “NO” answer is a finding for Linear.

YES NO

³ To be given only if the Court denies MPS’s Motion in Limine No. 1 and MPS’s Motion to Bifurcate.

⁴ To be given only if the Court denies MPS’s Motion in Limine No. 1 and MPS’s Motion to Bifurcate.

⁵ To be given only if the Court denies MPS’s Motion in Limine No. 1 and MPS’s Motion to Bifurcate.

II. INFRINGEMENT

A. Do you find that Linear has proven by a preponderance of the evidence that MPS has directly infringed any of the following patent claims?

A “YES” answer is a finding for Linear. A “NO” answer is a finding for MPS.

'178 Patent Claim No.		
	Yes	No
1		
2		
34		
41		
55		

'258 Patent Claim No.		
	Yes	No
1		
2		
3		
34		

B.⁶ Do you find that Linear has proven by a preponderance of the evidence that MPS has directly infringed, induced infringement, and/or contributorily infringed any of the following patent claims?

A “YES” answer is a finding for Linear. A “NO” answer is a finding for MPS.

'178 Patent Claim No.	Direct		Induced		Contributory	
	Yes	No	Yes	No	Yes	No
1						
2						
34						
41						
55						

⁶ To be given instead of “A” and to be given only if the Court denies MPS’s Motion in Limine No. 4.

'258 Patent Claim No.	Direct		Induced		Contributory	
	Yes	No	Yes	No	Yes	No
1						
2						
3						
34						

III. VALIDITY

A. Do you find that MPS has proven by clear and convincing evidence invalidity of any of the following claims by reason of anticipation or obviousness?

A “YES” answer is a finding for MPS. A “NO” answer is a finding for Linear.

'178 Patent Claim No.	Anticipation		Obviousness	
	Yes	No	Yes	No
1				
2				
34				
41				
55				

'258 Patent Claim No.	Anticipation		Obviousness	
	Yes	No	Yes	No
1				
2				
3				
34				

IV. UNENFORCEABILITY

A. Do you find that MPS has proven by clear and convincing evidence unenforceability of the '178 and '258 patents by reason of inequitable conduct?

A "YES" answer is a finding for MPS. A "NO" answer is a finding for Linear.

YES NO

B. Do you find that MPS has proven by a preponderance of the evidence unenforceability of the '178 and '258 patents by reason of patent misuse?

A "YES" answer is a finding for MPS. A "NO" answer is a finding for Linear.

YES NO

C. Do you find that MPS has proven by a preponderance of the evidence unenforceability of the '178 and '258 patents by reason of unclean hands?

A "YES" answer is a finding for MPS. A "NO" answer is a finding for Linear.

YES NO

Each juror must sign the verdict form to reflect that a unanimous verdict has been reached.

Dated: _____, 2008

FOREPERSON

MPS's OBJECTIONS TO LINEAR'S PROPOSED FINAL VERDICT FORM

1. MPS objects to Linear's inclusion in **Question I.B** of the validity of the liquidated damages. As set forth in MPS's Motion *in Limine* No. 1 and in MPS's briefs in support of its Motion to Bifurcate the Questions of the Availability and Enforceability of the \$3 Million Liquidated Damages Provision in the Settlement and License Agreement (D.I. 139, 140), the validity and applicability of the liquidated damages provision is a matter for the Court, not the jury, to decide. It would be clear error to submit this issue to the jury.

2. MPS further objects to Linear's **Question I.B** because the instruction states the wrong burden of proof for the invalidity of a liquidated damages provision, which simply required proof by a preponderance of the evidence. *See Hong v. Somerset Associates*, 161 Cal. App. 3d 111, 116 (1984) ("Under section 1671, subdivision (b), Buyers had the burden of proving, by a **preponderance of the evidence**, that the liquidated damages clause was unreasonable under the circumstances existing at the time the contract was made.") (emphasis added). *See also* Cal. Evid. Code § 115 ("Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.").

3. If the verdict form is permitted to include Linear's Question I.B (corrected to articulate the proper burden of proof), it should also include the questions set forth as questions I.C through I.F in MPS's verdict form, and the question "Do you find that MPS has proven by a preponderance of the evidence that the \$3 million liquidated damages provision of the Settlement Agreement is unconscionable in light of the \$10 the parties have stipulated to as patent infringement damages and the \$100 in sales of the MP1543?"

4. MPS objects to Linear's inclusion in **Question II.B** of an instruction on willful infringement. The issue of willfulness is not relevant to any issue in this case; it would only be

relevant if there were a possibility that patent infringement damages could be enhanced. There is no such possibility in this case. The parties have stipulated to patent infringement damages of \$10 should Linear establish infringement of a valid and enforceable patent claim. D.I. 88. Thus, Linear does not have an opportunity to claim enhanced damages. Accordingly, willfulness is not relevant to any issue in this case, and mentioning it in the jury instructions would be confusing to the jury and prejudicial to MPS. In addition, Linear brought this lawsuit without providing notice to MPS, MPS discontinued sales of the MP1543, and total net sales of the MP1543 in the United States totaled 110 parts and approximately \$100. Given this factual record, Linear had no basis for alleging willful infringement in the first place.

5. MPS objects to Linear's inclusion of **Question III.B** as unnecessary and likely to confuse the jury. This instruction is inconsistent with the Supreme Court's decision in *KSR Intern, Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007), which articulated a flexible approach to determining obviousness of a claim. Moreover, this question omits that invalidity can be found in light of art that, although not published, was disclosed to the inventors, and that references that are not prior art, but that represent near simultaneous invention, may still invalidate a patent.

Respectfully submitted,

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Dated: April 25, 2008
862899 / 30611

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on May 2, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on May 2, 2008, the attached document was Electronically Mailed to the following person(s):

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